IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 20TH DECEMBER 2006 / 29TH AGRAHAYANA 1928

WP(C).No. 31817 of 2006(K)

AGAINST THE ORDER IN IA.1591/06 IN
OS.51/2006 of MUNSIFF COURT, QUILANDY

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PETITIONER:

K.T.MADHAVAN,
S/O. K.T.GOPALAN,
RESIDING AT FLAT NO.9, ASMA MANZIL,
ANAMIKA STREET, CIVIL STATION,
KOZHIKODE.

BY ADV. SRI.V.V.SURENDRAN
SRI.P.A.HARISH

RESPONDENTS:

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1. K.T. ACHUTHAN, S/O. GOPALAN,
RESIDING AT EDATHIL,
THURUTHYAD DESOM, BALUSSERY AMSOM,
P.O. THURUTHYAD, VIA BALUSSERY,
KOYILANDI TALUK.

** 2. K.T.CHANDRASEKHARAN, S/O. GOPALN,
RESIDING AT 'SHEEJA NIVAS'
ULLIYERI AMSOM DESOM,
P.O. ULLIYERI, KOYILANDI TALUK.(DELETED)

** 3. K.T. CHANDRAMATHY, D/O. GOPALAN,
RESIDING AT 'SANGEETH'
VENGERI AMSOM DESOM,
MALAPARAMBA, KOZHIKODE TALUK.(DELETED)

** 4. K.T. BHASKARAN, C/O. DR. MAHESH,
HOMEO SUPER SPECIALITY HOSPITAL AND RESARCH CENTRE,
NAGAMBADAM, POSH MOUNT, KOTTAYAM.(DELETED)

5. K.T. PRABHAKARAN, S/O. GOPALAN,
RESIDING AT 'PRABHA SAILAM'
BALUSSERY AMSOM, P.O.THURUTHYAD,
VIA BALUSSERY, KOYILANDI TALUK.

** 6. K.T. VIJAYAN, S/O. GOPALAN,
RESIDING AT 'RAMYA NIVAS'
BALUSSERY AMSOM, P.O. THURUTHYAD,
VIA BALUSSERY, KOYILANDY TALUK.(DELETED)

7. K.T. SANTHAKUMAR, D/O. GOPALAN,
RESIDING AT 'KANISHKA'
GANDHI ROAD, KACHERI AMSOM,
KOZHIKODE TALUK.

8. K.T. SATHYVATHI, D/O. GOPALAN,
RESIDING AT PUNATHIL HOUSE,
KANNANKARA AMSOM, PATTARPALAM,
CHELANNUR, P.O. KANNANKARA,
VIA CHELANNUR, KOZHIKODE TALUK.

** 9. K.T. VALSALA, D/O. KUNHIRAMAN (DIED)
W/O. ASHOKAN,
RESIDING AT KURUMAYIL HOUSE,
KOZHARIYORE AMSOM,
P.O.KIZHARIYORE, KOYILANDI TALUK.(DELETED)

10. K.T. KOMALA, D/O. K.T. KUNHIRAMAN (DIED)
W/O. RAJAN, RETIRED TEACHER,
RESIDING AT MEKKAYIL HOUSE,
P.O. KAKKODI,
KAKKODI VILLAGE, KOZHIKODE TALUK.

** 11. K.T. RATHI, D/O. K.T. KUNHIRAMAN (DIED)
W/O. RAJAN, 30, C.NARAYANASWAMY NAGAR,
AERODROME ROAD, SINGANALLLUR,
(OPP.SHRI JAYENDRA SARASWATHY COLLEGE),
COIMBATORE-5. (DELETED)

12. K.T. PREETHI, D/O. K.T. KUNHIRAMAN (DIED)
W/O. GOPALAKRISHNAN,
PULLANHI HOUSE, KASABA AMSOM,
NEAR BEM U.P. SCHOOL,
PUTHIYARA, KOZHIKODE.

13. C.SREEMATHI, W/O. K.T. BALAKRISHNAN (DIED)
RESIDING AT KUNHALERI HOUSE, THURUTHYAD,
BALUSSERY AMSOM, P.O. THURUTHYAD,
VIA BALUSSERY, KOYILANDY TALUK.

14. K.T. GEETHA, D/O. K.T. BALAKRISHNAN (DIED),
W/O. DR. REMESH,
RESIDING AT 'PALAT HOUSE, WYNAD ROAD,
KALATHINKUNNU AMSOM, KOZHIKODE TALUK

15. K.T. ANITHA, D/O. K.T. BALAKRISHNAN (DIED)
W/O. JAYAPRAKASH,
RESIDING AT 19/337, PRIYANJALI,
KASABA AMSOM DESOM,
P.O. CHALAPPURAM, KOZHIKODE.

** 16. K.T. AJITH KUMAR, S/O. BALAKRISHNAN,
CHIEF ENGINEER, MERCHANT NAVY,
FLAT NO.A5, DHANWANTHARI,
B.P.T.C. HOSPUTAL COMPOUND,
MUMBAI-37, MAHARASHTRA. (DELETED)

**(RESPONDENTS 2,3,4,6,9,11 AND 16 DELETED FROM THE PARTY ARRAY AS PER ORDER DT. 30.11.06 IN I.A.16739/06)

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITONER'S EXHIBITS

EXT.P1: TRUE COPY OF PLAINT.

EXT.P2: TRUE COPY OF WRITTEN STATEMENT FILED BY RESPONDENTS 13 TO 15.

EXT.P3: TRUE COPY OF AFFIDAVIT FILED IN SUPPORT OF PETITION AS FILED IA 1591/06.

EXT.P3A: TRUE COPY OF WORK MEMO.

EXT.P4: TRUE COPY OF APPLICATION FILED BY PETITIONER.

EXT.P5: TRUE COPY OF COUNTER STATEMENT FILE DBY RESPONDENTS 13 TO 15.

EXT.P6: TRUE COPY OF ORDER PASSED BY LEARNED MUNSIFF IN I.A.1591/06.

/TRUE COY/

PA TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.31817 OF 2006

DATED THIS THE 20th DAY OF DECEMBER, 2006

JUDGMENT

Petitioner is the plaintiff and respondents the defendants in O.S.51/06 on the file of Munsiff Court, Quilandy. Suit is filed for partition of plaint schedule properties. I.A.1591/06 was filed by petitioner seeking appointment of an Advocate Commissioner. Under Ext.P6 order, learned Munsiff dismissed the application holding that petition was filed beyond the period of one month, after the period of settlement of issues and hence it cannot be allowed. Though notice was sent to respondents and also served on the Counsel appearing for respondents before the trial Court, respondents did not appear.

2. Learned Counsel appearing for petitioner was heard.

3. Under Ext.P6 order, learned Munsiff dismissed the application for appointment of a Commissioner on the sole ground that the petition was not filed within one month from the date of settlement of the issues.

4. Arguments of learned Counsel appearing for petitioner was that the property sought to be partitioned in the suit is the property available after alienations of the proeperties obtained by the parties as

per the partition deed and defendants in the written statement contended that no property remains after alienations and therefore it is necessary to appoint a Commissioner. Unfortunately, learned Munsiff has not considered this aspect at all and dismissed the application for the sole reason that the application was filed belatedly. Suit is only filed on 2006. It cannot be said that the Commission application was unduly belated. In such circumstances, Ext.P6 order is quashed.

Learned Munsiff is directed to pass appropriate order in I.A.1591/06., after considering the question whether appointment of Commissioner is necessary or not for resolving the disputes involved in the suit, in view of the contentions raised by parties.

M.SASIDHARAN NAMBIAR,JUDGE

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